

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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AGERE SYSTEMS, INC., CYTEC  
INDUSTRIES INC., FORD MOTOR  
COMPANY, SPS TECHNOLOGIES, LLC  
and TI GROUP AUTOMOTIVE SYSTEMS  
L.L.C.,

Plaintiffs,

v.

ADVANCED ENVIRONMENTAL  
TECHNOLOGY CORPORATION, et al.,

Defendants.

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Civil Action No. 02-CV-3830 (LDD)

**MOTION FOR ORDER OF DISMISSAL**

Plaintiffs Agere Systems, Inc., Cytec Industries Inc., Ford Motor Company, SPS Technologies, LLC and TI Group Automotive Systems L.L.C. ("Plaintiffs") and Defendant Ashland Inc. ("Settling Defendant"), by their undersigned counsel, hereby move for the entry of an Order dismissing and barring claims against Settling Defendant. In support of this motion, Plaintiffs and Settling Defendant aver as follows:

1. On June 18, 2002, Plaintiffs filed a Complaint<sup>1</sup> against Defendants alleging that they were liable under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9613 ("CERCLA") and the Pennsylvania Hazardous Sites Cleanup Act, 35 Pa. Cons. Stat. § 6020.101 *et seq.* ("HSCA"), and seeking response costs,

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<sup>1</sup> Four Amended Complaints were filed after this date as follows: Amended Complaint, filed August 26, 2002; Second Amended Complaint filed February 21, 2003; Third Amended Complaint filed September 8, 2003; and Fourth Amended Complaint filed August 1, 2005. The Fourth Amended Complaint is captioned *Agere Systems, Inc., et al. v. Advanced Environmental Technology Corporation, et al.*

contribution, and declaratory relief in connection with the Boarhead Farm Superfund Site (the "Site").

2. On June 30, 2004, this Court entered a Memorandum Order setting forth certain rulings concerning the dismissal of Defendants who enter into settlements with Plaintiffs.

3. Following settlement negotiations, Settling Defendant entered into an agreement with Plaintiffs to settle Plaintiffs' claims against them in the within action.

4. The settlement reached between the parties and embodied in the settlement agreement is neither collusive nor fraudulent, was arrived at by arms-length process of negotiation and in good faith, and resolves all claims between the parties.

5. The proposed Order of Dismissal submitted herewith reflects the Court's opinion in the June 30, 2004 Memorandum Order.

WHEREFORE, Plaintiffs and Settling Defendant respectfully request that this Court enter the proposed Order.


Dated: June 4, 2008



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Glenn A. Harris, Esquire  
Ballard Spahr Andrews & Ingersoll  
A Pennsylvania Limited Liability Partnership  
Plaza 1000, Suite 500, Main Street  
Voorhees, New Jersey 08043  
Phone: (856) 761-3400  
E-mail: harrisg@ballardspahr.com

Attorney for Plaintiffs

A handwritten signature in black ink, appearing to read 'Jeffrey D. Pettit', is written over a horizontal line.

Jeffrey D. Pettit, Esquire  
Phelan, Pettit & Biedrzycki  
The North American Building  
Suite 1600  
121 South Broad Street  
Philadelphia, Pennsylvania 19107  
E-mail: [jpettit@pp-b.com](mailto:jpettit@pp-b.com)

Attorney for Defendant Ashland Inc.

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2008,

it is hereby ORDERED that Plaintiffs' Motion for Dismissal of Defendant Ashland Inc.

("Settling Defendant") (Doc. No. \_\_\_\_\_) is GRANTED.

IT IS FURTHER ORDERED AS FOLLOWS:

1. All claims asserted by the Plaintiffs in the Fifth Amended Complaint against the Settling Defendant and all actual and potential counterclaims by the Settling Defendant against the Plaintiffs arising out of the subject matter of the Fifth Amended Complaint shall be and hereby are dismissed and barred with prejudice, and the Settling Defendant is hereby dismissed as a party to this action.

2. This dismissal is without costs or attorneys' fees against the Plaintiffs or the Settling Defendant, each party to bear its own costs and fees.

3. All deemed, asserted and potential cross-claims (whether for CERCLA section 107 cost recovery, CERCLA section 113 contribution, or otherwise) by the Non-Settling Defendants against the Settling Defendant and by the Settling Defendant against the Non-Settling Defendants arising out of the claims asserted in the Fifth Amended Complaint (including any claims or cross-claims otherwise assigned by the Settling Defendant to the Plaintiffs in the Settlement Agreement), shall be and hereby are dismissed and barred with prejudice.

4. The Court's Memorandum Order filed June 30, 2004 (Doc. No. 96) will govern in determining the extent, if any, to which the Non-Settling Defendants' liability, if any, should be offset, in whole or in part, by the Settlement Agreement.

5. This Order of Dismissal with Prejudice does not bar or otherwise adjudicate the following potential claims or cross-claims relating to the Site that potentially may be asserted in the future by or against any party or other person, which potential claims were neither asserted in the Fifth Amended Complaint nor resolved in the Settlement Agreement:

A. Toxic tort claims (including, but not limited to, claims for injury to persons or offsite property, and related claims for medical monitoring, consequential damages, punitive damages and/or loss of value of property);

B. Claims at other sites arising from the direct or indirect shipment prior to 1990 of hazardous waste, hazardous substances or other materials from the Site; and

C. Claims for natural resource damages or assessments at or caused by the Site.

6. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finding no just reason for delay, this Order of Dismissal with Prejudice shall be entered as a final judgment of the Court with respect to the Settling Defendant, and the dismissal of cross-claims with prejudice as provided herein shall be deemed to be a final Order of the Court.

BY THE COURT:

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Legrome D. Davis, J.

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**CERTIFICATE OF SERVICE**

DAWN M. NEUKIRCH, of full age, certifies as follows:

1. I am employed by the law firm of Ballard Spahr Andrews & Ingersoll, LLP, as a legal administrative assistant.

2. On this date, I caused one copy of Plaintiffs' Motion for Order of Dismissal of Defendant Ashland Inc. and Certification of Service to be served via electronic submission upon the following:

**ALL DEFENDANTS ON ATTACHED SERVICE LIST**

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dawn M. Neukirch /s/

Dated: June 17, 2008

Boarhead Farm Defendant Service List

File No. 892241

Laurie J. Sands, Esquire  
Wolff & Samson, PC  
The Offices at Crystal Lake  
One Boland Drive  
West Orange, New Jersey 07052  
Phone: 973-530-2098  
Fax: 973-530-2298  
e-mail: [lsands@wolffsamson.com](mailto:lsands@wolffsamson.com)

*-and-*

Robert M. Morris, Esquire  
Morris & Adelman, P.C.  
1920 Chestnut Street  
P.O. Box 30477  
Philadelphia, PA 19103  
Phone: 215-568-5621  
Fax: 215-568-3253  
e-mail: [rmmorris@morrisadelman.com](mailto:rmmorris@morrisadelman.com)  
*Advanced Environmental Technology Corp.*

Melissa Flax, Esquire  
Carella, Byrne, Bain, Gilfillian, Cecchi,  
Stewart & Olstein, P.C.  
5 Becker Farm Road  
Roseland, New Jersey 07068-1739  
Phone: 973-994-1700  
Fax: 973-994-1744  
e-mail: [mflax@carellabyrne.com](mailto:mflax@carellabyrne.com)  
*Handy & Harman Tube Company*

Lynn Wright, Esquire  
Edwards Angell Palmer & Dodge, LLP  
750 Lexington Avenue  
New York, New York 10022-1200  
Phone: 212-308-4411  
Fax: 212-308-4844  
e-mail: [lwright@ealaw.com](mailto:lwright@ealaw.com)  
*Carpenter Technology Corporation*



Christopher R. Booth, Jr., Esquire  
Booth and Tucker  
One Penn Center at Suburban Station  
1617 JFK Boulevard, Suite 1700  
Philadelphia, Pennsylvania 19103  
Phone: 215-875-0609  
Fax: 215-875-8143  
e-mail: [cbooth@boothtucker.com](mailto:cbooth@boothtucker.com)  
*Special Litigation Counsel for Carpenter Technology Corporation*

Edward Fackenthal, Esquire  
Law Office of Edward Fackenthal  
One Montgomery Plaza  
Suite 209  
Norristown, PA 19401  
Phone: (610) 279-3370  
Fax: (610) 279-0696  
*NRM Investment Co.*  
e-mail: [edwardfackenthal@cs.com](mailto:edwardfackenthal@cs.com)